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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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41131	7590	07/24/2007		
KENNETH EARL DARNELL 2010 WEST SEVENTH STREET COFFEYVILLE, KS 67337			EXAMINER HYUN, PAUL SANG HWA	
			ART UNIT 1743	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/705,701	Applicant(s) KNAPP, CHRISTINE L.	
	Examiner Paul S. Hyun	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

REMARKS

In response to the Office action dated 11/26/06, Applicant cancelled claims 1-22 and added new claims 23-43.

The objection to the Abstract cited in the previous Office action has been withdrawn in light of the submission of the amended Abstract.

All claim rejections have been withdrawn in light of the cancellation of the rejected claims.

Claim Objections

Claims 23, 27 and 31 are objected to because of the following informalities:

The word "affect" recited in the claims should be changed to "effect".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claim **33** is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a target OR a projectile comprising an aromatherapeutic agent, does not reasonably provide enablement for a target AND a projectile each comprising an aromatherapeutic agent. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims.

Page 3 of the Specification provides support for incorporating aromatherapeutic agents on a poster. Alternatively, the Specification provides support for incorporating aromatherapeutic agents on a projectile such as a ball. However, the Specification does

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not provide support for incorporating aromatherapeutic agents on a target AND a projectile.

Claim **33** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Page 3 of the Specification provides support for incorporating aromatherapeutic agents on a poster. Alternatively, the Specification provides support for incorporating aromatherapeutic agents on a projectile such as a ball. However, the Specification does not provide support for incorporating aromatherapeutic agents on a target AND a projectile.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **23-25, 29-31, 36, 37 and 39** are rejected under 35 U.S.C. 102(b) as being anticipated by Sweeny (US 4,528,226).

Sweeny discloses that “scratch ‘n’ sniff stickers”, which comprise a sticker coated with a film of microcapsules containing fragrances, are well known in the art. The reference further discloses the act of rupturing the microcapsules by applying pressure

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or shear to the microcapsule layer (e.g. scratching with a fingernail), (see lines 62-68, col. 1). The released scent is configured to correspond to the image on the sticker.

It should be noted that the limitation "emotionally driven" recited in claim 23 does not further limit the claimed invention because the limitation is directed towards intent. Only limitations that are directed toward the physical acts required to accomplish the claimed method will be considered on the merits.

With respect to claim 24, it should be noted that any object that is capable of being thrown is within the scope of the claimed invention.

It should be noted that the "effect" recited in claim 31 is an inherent outcome of the method steps. In other words, if the prior art discloses all the steps of the claimed method, then it is considered to naturally accomplish the effect as well, regardless of the intent of the prior art.

Claims **23-25, 28-31, 36-39 and 42** are rejected under 35 U.S.C. 102(b) as being anticipated by Goldwasser (US 4,487,585).

Goldwasser discloses a toy comprising a plurality of recesses 14 wherein each recess comprises a surface and a unique scratch 'n' sniff sticker. The scent emitted by each sticker correlates to the image disposed on each sticker (e.g. apple, watermelon), (see Abstract and Fig. 1).

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims **23-25, 28-31, 39, 42 and 43** are rejected under 35 U.S.C. 102(e) as being anticipated by Sitabkhan (US 2004/0022990 A1).

Sitabkhan discloses an article comprising an aromatherapeutic agent disposed thereon wherein the article can be a poster and the image on the poster corresponds to the aroma emitted by the poster (see [0042]). The reference discloses that the article is intended to illicit fresh sensory experiences (see [0025]). The aromatherapeutic agent is encapsulated in microcapsules wherein the microcapsules are configured to rupture upon exposure to compression force, heat, or shear force. In addition to aromatherapeutic agents, anti-microbial agents and deodorizing agents can be incorporated onto the surfaces of the articles for sanitation purposes (see [0011]).

With respect to claim 24, it should be noted that any object that is capable of being thrown is within the scope of the claimed invention.

With respect to claim 31, the Examiner maintains the position that the “effect” of the claimed method is an inherent outcome of the method steps. In other words, if the prior art discloses all the steps of the claimed method, then it naturally accomplishes the effect as well, regardless of the intent of the prior art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **26, 32, 34, 35 and 41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitabkhan.

As discussed above, Sitabkhan discloses articles comprising aromatherapeutic agents, anti-microbial agents and deodorizing agents disposed thereon. The agents are contained in micro-capsules and the micro-capsules are configured to rupture upon exposure to pressure or force (see [0011]). Furthermore, the reference discloses that the article can be carpets, rugs, fibrous mats, furniture, drapery, and similar products and materials that provide a nutrient rich environment for odor producing bacteria and organisms to grow (see [0004] and [0005] and Abstract).

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With respect to claims 26 and 41, although the reference does not explicitly disclose that the article is a punching bag, in light of the disclosure, it would have been obvious to one of ordinary skill in the art to apply the agents onto a punching bag since a punching bag is a fabric that provides a nutrient rich environment for odor producing bacteria and organisms to grow.

With respect to claims 32, 34 and 35, although Sitabkhan does not disclose how the microcapsules on the poster are ruptured, given that posters are typically plastered on a wall, it would have been obvious to one of ordinary skill in the art to rupture the microcapsules using any percussive action known to one of ordinary skill in the art, including throwing objects against the poster.

Claims **27 and 40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitabkhan in view of Mookherjee et al. (US 4,376,068).

Sitabkhan does not explicitly disclose that the article can be a vehicle dashboard. However, the reference discloses that the article can be carpets, rugs, fibrous mats, furniture, drapery, and similar products and materials that provide a nutrient rich environment for odor producing bacteria and organisms to grow.

Mookherjee et al. disclose a vehicle dashboard comprising perfumed polymer. The scented dashboard is intended to keep the interior of the car fragrant (see Example XVI, col. 31). In light of the disclosure, it would have been obvious to one of ordinary skill in the art to apply the fragrant/antimicrobial agents disclosed by Sitabkhan onto a vehicle dashboard to keep the interior of the car fragrant.

It should be noted that the "effect" recited in claim 27 is an inherent outcome of the method steps. In other words, if the prior art discloses all the steps of the claimed method, then it is considered to naturally accomplish the effect as well, regardless of the intent of the prior art.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection. Nonetheless, Applicant's arguments will be addressed because they are relevant to the cited references. That said, Applicant's arguments have been fully considered but they are not persuasive. Applicant argues that the fragrances disclosed by the cited references do not constitute an aromatherapeutic agent. This argument is not persuasive because the fragrances disclosed by the cited references are within the scope of the term "aromatherapeutic agent" as disclosed in the Specification and the claims of the instant application. According to the Specification of the instant application, an aromatherapeutic agent can be a single fragrance intended to be pleasant to the senses (see page 1 of the Specification). In this instance, each of the cited references discloses at least one fragrance intended to be pleasant to the senses. Moreover, as disclosed in page 2 of the Specification, Applicant concedes that the fragrances disclosed by Sweeny et al. are aromatherapeutic agents.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul S. Hyun whose telephone number is (571)-272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PSH
7/20/07


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